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S.B. CIVIL MISC. APPEAL NO.1905/2007.
Jitendra Singh & Ors.
Vs.
Bheru Lal Sharma & Ors.

Date of Order :: 13th August 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. S.K. Sankhla, for the appellants.

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BY THE COURT:

For quantification of compensation to be awarded to the children of the vehicular accident victim Pratap Singh, above 51 years of age and working as Helper in the office of Assistant Engineer, Public Health Engineering Department, City Sub-Division IV, Jodhpur, the Tribunal has examined the salary certificate of the deceased (Ex.12); and as against the assertion of the claimants of his income at Rs.8,065/- per month, has taken his net income at Rs.7,105/-, i.e. Rs.85,260/- per annum; and on the basis of evidence on record, taking only the unmarried and unemployed son of the victim as his dependent, has taken loss of contribution for the claimants at one-half of the estimated income, i.e. at Rs.42,630/- per annum; and with application of multiplier of 11 has assessed pecuniary loss at Rs.4,68,930/-. The Tribunal has further allowed Rs.2,000/- towards treatment expenditure as the accident occurred on 13.05.2006 at about 7:00 a.m.

and the victim expired in hospital at about 6:20 p.m. the same day. The Tribunal has further allowed Rs.2,000/- towards funeral expenses and Rs.5,000/- to each of the four claimants towards loss of love, affection and guidance of the victim and in this manner, has assessed total loss for the claimants at Rs.4,92,930/- and while making the award in this amount towards compensation, has allowed interest @ 6% per annum from the date of filing of the claim application. The claimants seek enhancement over the amount so awarded by the Tribunal.

Learned counsel Mr. S.K. Sankhla appearing for the appellants has strenuously contended that the Tribunal has been in error in taking only 50% of the estimated income of the deceased towards loss of the claimants and the Tribunal has further erred in not providing any amount towards future enhancement prospects though the deceased was in a settled job. In the fact situation of the present case, the submissions remain meritless.

The deceased was above 51 years of age and the claimants, children of the victim, are shown to be two married daughters in 26-25 years of age, one married son in 23 years of age, and an unmarried and unemployed son in 22 years of age. In the context of such family set up and in the overall circumstances, the Tribunal was perfectly justified in taking

50% of the estimated income towards loss of contribution for the claimants. It cannot be said that in every claim for compensation, invariably entire of two-third of the estimated income ought to be taken towards loss of dependency. With the advanced age of the victim and so also with the claimants including two married daughters and one married son, and the claimants being in the age of 27-23 years, assessment of multiplicand at 50% of the estimated income of the deceased is not incorrect.

So far the claim towards future prospects is concerned, true it is that the deceased has been shown to be in a settled employment; but the factor that he was above 51 years of age cannot be lost sight of. Then, assessment of pecuniary loss has been made with application of multiplier of 11 as per Second Schedule to the Motor Vehicles Act, 1988 and not as per the remaining years of service; keeping in view the aspect that the deceased was likely to earn even after retirement. But in relation to such assessment, likelihood of reduction in his earnings after retirement cannot be ignored. Thus, for average estimate in this case, the Tribunal has not been in error in not providing for any component towards future prospects.

In the ultimate analysis, the assessment of pecuniary loss in this case at Rs.4,92,930/- could only be said to be

rather on the higher side. The Tribunal has not restricted in awarding compensation on any other score either. The ultimate amount of compensation at Rs.4,92,930/- rules out any scope for enhancement.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

Mohan/